



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,480	10/21/2003	John Keeler SR.	424532-002	5040

27805 7590 10/25/2007  
THOMPSON HINE L.L.P.  
Intellectual Property Group  
P.O. BOX 8801  
DAYTON, OH 45401-8801

EXAMINER

CHAWLA, JYOTI

ART UNIT	PAPER NUMBER
----------	--------------

1794

MAIL DATE	DELIVERY MODE
-----------	---------------

10/25/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	Application No. 10/691,480	Applicant(s) KEELER, JOHN	
	Examiner Jyoti Chawla	Art Unit 1794	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 05 October 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.

6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 3-5,7,10,12,13,15 and 18.

Claim(s) withdrawn from consideration: \_\_\_\_\_

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

13. ☐ Other: \_\_\_\_\_

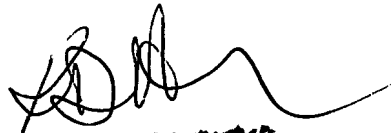
Continuation of 5. Applicant's reply has overcome the following rejection(s): 112 (second paragraph) rejection regarding "placing a volume of ambient air into the said flexible pouch".

Continuation of 11. does NOT place the application in condition for allowance because: The amendment to claim 18, is able to overcome the rejection under 112 Second paragraph, regarding the indefiniteness of "placing a volume of ambient air into the said flexible pouch". However, the amendment to claim 18 does not clarify the method of packaging any further because the amended claim 18 now recites "after said crabmeat has been placed into said flexible pouch, controlling a volume of ambient air in said flexible pouch", which still does not clarify as to how the volume of air is being controlled in the said flexible pouch. Therefore, the amendment to claim 18, does not change the instantly claimed method of packaging crabmeat for the purpose of prior art comparison. The amended claim 18, also does not lend a patentable distinction to the claims, absent any clear and convincing evidence and/or arguments to the contrary.

The claims remain rejected for the reasons of record stated in the office action mailed October 4, 2007, i.e.,

(A) Claims 3-5, 7, 10, 12-13, 15 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Doerter (US 5268189) in view of the combination of Peterson et al (J of Food Protection 8/1997, 60 (8), 928-934 (Abstract), Byrd (US 2546428), Air Liquide Canada (RD 235012 Abstract only) and Sugisawa et al (US 4840805).

(B) Claims 3-5, 7, 10, 12-13, 15 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ueyama et al. (US 2002/0061412) in view of the combination of Peterson et al (J of Food Protection 8/1997, 60 (8), 928-934 (Abstract), Air Liquide Canada (RD 235012 Abstract only) and Sugisawa et al (US 4840805).



**KEITH HENDRICKS**  
**PRIMARY EXAMINER**